

State of the Judiciary Address
Chief Justice Carol Hunstein, Georgia Supreme Court
Message to the Legislature
February 16, 2011, in Atlanta, Georgia

Lt. Governor Cagle, Speaker Ralston, members of the General Assembly, my colleagues in the Judiciary, my fellow Georgians:

On behalf of the judicial branch, it is my privilege and honor to present to this distinguished body my second address on the State of Georgia's Judiciary. This traditional invitation from the legislative branch to the Chief Justice underscores your interest in Georgia's judicial system and the respect we hold for each other as separate, co-equal branches of government. At this important milestone in our new year, I welcome this opportunity to share with you today the judiciary's accomplishments of the last year, the challenges we face, and our plans for a bright and solid future in fulfilling our duty to uphold the Constitutions of this state and our country and guarantee justice to all Georgians through fair and impartial courts.

I first want to recognize my friends and colleagues who serve with me on the Supreme Court of Georgia: Presiding Justice George Carley, Justices Robert Benham, Hugh Thompson, Harris Hines, Harold Melton and the newly elected David Nahmias. I also want to acknowledge the members of the Georgia Court of Appeals, including the new Chief Judge – John Ellington – and the new members of that court – Judges Keith Blackwell, Stephen Dillard and Christopher McFadden.

In their magnificent crafting of our Democracy, our forebears not only created a separation of powers through the establishment of an executive branch, legislative branch, and judicial branch, but they also saw to it that our citizens had the right to choose their leaders. Just as the seasons change and spring brings new blossoms, we are graced in Georgia this year with fresh, new leaders in all three branches of government.

I congratulate our new Governor – Nathan Deal – with whom I have already had the privilege of meeting. As a former juvenile court judge and prosecutor, and as the father of a Superior Court Judge, Governor Deal appreciates the challenges and constitutional pressures we in the judiciary face in upholding the rule of law and protecting the public safety. I look forward to working with him.

While I have many friends in the Legislature, I have also had the privilege of meeting those of you who are newly elected legislators. I am confident that each of you is poised for greatness and that your accomplishments in the coming years will be many. I look forward to working with all of you as we share in our common mission of serving the people of this great state.

Dr. Martin Luther King, Jr. said that, "The ultimate measure of a man is not where he stands in moments of comfort, but where he stands at times of challenge and controversy."

The fall-out from the recent recession has created challenges of historic proportions. We who are government leaders sense we have entered a new era. In the past, a rebounding economy has

always followed quickly on the heels of recession, but this downturn has been different. The times we live in demand permanent change as we learn to live with doing more with less. No longer can state government grow unchecked. All of us have had to make cuts and trim staff. That includes the judicial branch. It has been particularly painful for those of us who have had to lay off employees whose families depend on their jobs. Even as we confront necessary but difficult choices, however, it is imperative that the government maintain staff and resources to fulfill its vital, indispensable responsibilities.

Just like so many Georgia families sit around their kitchen tables in the evening struggling to figure out how to pay the bills and put food on the table, we in the judiciary have worked hard to streamline our operations without violating our constitutional mandates or compromising our core functions.

Keeping our citizens safe is one of government's fundamental obligations. Indeed our Georgia Constitution requires the government to protect the public safety. The courts play a crucial role in doing so.

Sentence Reform

Today, Georgia stands on the brink of making significant reform in how it sentences criminal offenders. A national wave of sentencing reform is sweeping the country, and it holds bright promise for Georgia.

Last September, Rep. Wendall Willard and I attended a conference in Alabama called by the Chief Justice of that state to consider the prospect of sentencing reform. Alabama is currently at 120 percent of prison capacity. Georgia is not far behind, at 106 percent. The fact is, there are a lot of people in prison who are a greater threat to themselves than to society. Rather than lock up drug addicts and the mentally ill, we must reserve our prison beds for our most serious criminals – those who commit violent crimes; those who commit crimes against children.

Many states, including Texas and South Carolina, have discovered they can keep the public safer and spend less money by supervising some non-violent offenders outside of prison and treating the root causes of crime.

Georgia's leaders in all three branches of government recognize that we can no longer afford the more than \$1 billion it costs us annually to maintain the fourth-highest incarceration rate in the nation. Today, one of every 13 Georgians is behind bars or on probation or parole. That is the highest rate in the nation of people under some kind of criminal justice restraint. Ladies and gentlemen, Georgia has proven we can be tough on crime, with mandatory minimum sentences that allow no chance for parole. But are we any safer? And at what cost?

Unfortunately, there will always be those who commit crimes. But we cannot continue to build more prisons.

Under the leadership of Rep. Willard, Rep. Jay Neal and Sen. Johnny Grant, a group of us has

been informally meeting to discuss what we could do here in Georgia. This group includes interested stakeholders from all three branches. We are looking at alternatives to incarceration for certain offenders with two goals in mind – to improve the public safety, and to save taxpayer dollars. Georgia’s judges need more discretion in the courtroom to ensure that the sentence fits the crime. Our judges know how to balance punishment with the public safety. And they know that sending a young man to prison for a non-violent crime may not be the best sentence if he will emerge years later with no education, a prison record and little chance of getting a job. As a Texas legislator said, we need these offenders to be taxpayers, not tax burdens.

Even among those who serve time in prison, there are steps we can take to reduce the likelihood that they will reoffend once they get out. The State Bar of Georgia’s BASICS program has for years helped enhance the public safety by training inmates who are within six months of their release in the life and work skills they will need to become productive citizens.

The beauty of challenge is that it is often a motivator for change, and we in the judicial branch have seized that opportunity. Even in these difficult economic times, we have made striking progress.

Drug And Specialty Courts

One of our greatest successes has been our specialty courts. If we hope to save precious taxpayer dollars while protecting the public safety, the criminal justice system must change the way it has historically handled offenders with drug and alcohol addictions and mental illness.

Thanks in large part to your support, Georgia’s drug courts, DUI courts and mental health courts have become a model for the nation. These are not feel-good, soft-on-crime alternatives to prison. Rather, they keep the public safer by breaking the cycle of crime through a combination of treatment for non-violent offenders with strict accountability measures. It is heartening to those of us in the judiciary that so many of our state leaders, including Governor Deal, Lieutenant Governor Cagle and Speaker Ralston, understand the importance of these courts. That is because these courts have a proven track record.

A recent report by the Georgia Department of Audits found that drug courts in this state have resulted in lower sentencing costs and lower recidivism rates. The report found that drug courts cost up to *80 percent less* than the average daily cost of other traditional sentencing options. More importantly, though, is their effectiveness in reducing crime and protecting the public safety. After two years, only *7 percent* of drug court participants re-offended, compared to the *29 percent* who reoffended after simply spending time in prison.

They’re people like Cornell Caradine. Mr. Caradine is a former Marine who today is 56 years old. While serving his country, he became addicted to alcohol and later, he also became addicted to cocaine. He spent the next 15 years in and out of jail, racking up 26 arrests for various crimes – mostly shoplifting and theft by taking – to pay for his \$75-a-day alcohol and drug dependency. His wife divorced him.

In 2005, Mr. Caradine was diverted into DeKalb County’s drug court, under the leadership of

recently retired Superior Court Judge Robert Castellani and Judge Cynthia Becker. Mr. Caradine graduated from drug court and today he has six years of sobriety behind him. He has had no arrests and he has been fully employed for five years.

And he has remarried. Mr. Caradine, Judge Castellani and Judge Becker, would you please stand.

Like Judge Castellani and Judge Becker, we have many of Georgia's judges to thank for their innovation and willingness to lead these effective and efficient courts. Among them: Chief Judge Jeffrey Bagley of Forsyth County, whom I recently appointed as Chair of the Judicial Council of Georgia Standing Committee on Drug Courts; Judges Jason Deal and Kathlene Gosselin of Hall County, Chief Judge Brenda Weaver of Pickens County, and Judge Doris Downs of Fulton County. We also have Judge William Fears of Butts County and Judge James Blanchard of Richmond County to thank for their leadership in creating this state's first two veterans court. Veterans courts, like drug and mental health courts, address our veterans and soldiers who have risked their lives in battle and come back with addictions and mental health issues that lead them into homelessness and crime.

Because of all these judges' leadership, today in Georgia, of 49 judicial circuits, 37 are being served by at least one of these specialty courts. But that is not enough.

That state audit I mentioned identified 4,000 individuals who were sitting in state prison in August 2009, who potentially could have been diverted to drug court. If only 20 percent of those eligible prisoners had entered drug court, the state would have saved as much as *\$8 million*.

Another type of specialty court we hope to pilot this year is domestic violence courts.

Georgia today has the 15th highest rate of domestic violence homicides. One way to stem that tide is through domestic violence courts. Chief Magistrate Judge Daphne Walker of Clayton County hears domestic violence cases in a special calendar. She understands the challenges and the unique ways in which they must be handled to ensure the safety of victims, while holding the offenders accountable. The result has been that since Clayton County began this special calendar in 2005, there has been a marked reduction in domestic violence homicides in that county.

Ladies and Gentlemen, these courts save lives, reunite families, protect the public and save money. Our goal should be to spread them to every judicial circuit of our state. As former Georgia Congressman Newt Gingrich recently said to *The Atlanta Journal-Constitution*: "If I can be safer and it's less expensive and we have citizens who are now dedicated, productive taxpaying citizens – which part of that is bad?"

In the civil area, in 2005 the Georgia Supreme Court approved creation of a Business Court in Fulton County – the brainchild of Senior Judge Melvin Westmoreland. Last year, the Fulton County Superior Court Judges announced they were making the Business Court a permanent division, for good reason. With judges and staff attorneys who have been specially trained in business law, the Business Court has proved to be an effective and efficient way of handling complex business litigation such as shareholder derivative suits, securities fraud cases, and complex contractual and commercial tort disputes with damages in excess of \$1 million.

Georgia's Business Court has already received national recognition.

Judge Westmoreland, Judge Walker, Judge Bagley and all judges who preside over these special courts, would you now please stand so we can express our appreciation.

Jury Composition

Another promise for the future is a new way of compiling lists of citizens who are eligible to serve on juries. This effort has been seven years in the making and is led by my colleague, Justice Hugh Thompson. The purpose of this change is to protect everyone's constitutional rights to equal protection and a jury of his or her peers. Technological advances have allowed us to improve the quality of the data about people eligible to serve. The new system would use not just voter registration lists that tend not to capture all segments of our society, but it would also include vital statistics and drivers' records that would help us fulfill the constitutional mandate of guaranteeing fair and impartial juries.

Just as our juries must reflect the populace, so should our judges. Our citizens' confidence in the courts depends on their assurance that they will receive equal justice. This is an area that needs improvement, as around the country, the diversity of judges lags far behind the population. I urge the newly appointed Judicial Nominating Commission to seek out the most highly qualified jurists, while keeping in mind the importance of having a judiciary that reflects the population.

Former Justice Louis Brandeis said, "Sunshine is the best disinfectant."

Good government means open government. Advances in technology have enabled us to make our courts more accessible than ever to the citizens of our state. This past year, after years in the making, the Georgia Supreme Court unveiled our electronic filing system. This has transformed the way we do business, enabling lawyers to file briefs and other documents in this Court directly from their computers, and allowing this Court to immediately notify the attorneys of its orders and final opinions. We are committed to making the business of the court – the decisions we make that affect thousands of lives – more accessible to the public.

JQC

In addressing the State of our Judiciary, I would be remiss to fail to mention that this past year marked an unprecedented number of investigations into the misconduct of a number of our judges. Since 2008, the Judicial Qualifications Commission's investigations have resulted in the resignation or removal of 22 judges. However, I consider this a sign that the JQC, a constitutionally mandated agency under the new leadership of Jeff Davis, is aggressively pursuing its duty to identify those judges who have proven themselves unqualified to serve. The good news is that with 1800 Georgia judges, the vast majority are well qualified and fulfill their constitutional duties with the utmost integrity. The JQC is an important agency that must be fully funded to do its work.

Last year, I told you that Georgia's judicial branch stood at a crossroads – that due to budget cuts, we were in increasing peril of being unable to fulfill our constitutional mandates. This year,

I report to you that the state of the judiciary remains strong – but it continues to struggle. Those constitutional mandates I speak of are far-reaching and the very foundation of our democracy. Despite budget cuts, we have the duty to protect access to justice for all. We have the duty to uphold the Constitutions of our state and nation and the laws that you pass. We have the duty to protect individuals' rights. The courts are one leg in the stool of our democracy that provides an essential balance in our government.

Once again this year, I emphasize that the entire judicial branch receives less than 1 percent of the entire state budget. At the same time, last year we generated more than \$544 million in fees, with nearly \$90 million of that returned to the state general fund.

Those of us in the judicial branch have already proven we are capable of making tough decisions. For some years now, we have already been doing more with less. The Court of Appeals has taken 12 furlough days and laid off 10 employees. At the state's highest court, we have laid off staff, furloughed our Justices, closed our law library, put a ban on travel, recycled used paper into notepads and now buy some of our own office supplies. Our small staff of 43 people is six fewer than what we had a full decade ago. And I am confident in saying that your Supreme Court may be the only high court in the nation that must depend on unpaid interns rather than a paid employee to answer the phones and greet visitors to our main office. Yet in the face of a smaller staff, our caseload has grown. Death penalty cases – those with the most profound consequences and requiring the most time and attention – have increased 33 percent. Interim appeals in death penalty cases – brought prior to final disposition – have increased 133 percent.

Our courts are like the emergency room of society. We must take all cases the law requires. Not surprisingly, in tough economic times, caseloads have increased in most classes of courts.

Georgia's superior courts handle the most serious criminal cases, including death penalty cases, divorces and other civil actions. In 2009, more than 450,000 cases were filed in our superior courts. Between 2003 and 2009, the combined civil and criminal caseload for each superior court judge increased by more than 19 percent.

In Fulton County, our state's largest court system, there is a current backlog of 1,288 criminal cases, 89 of which are murder cases. Last year, the Fulton County District Attorney's office indicted more than 10,000 cases.

Let me be clear about the tipping point. Our state and U.S. Constitutions guarantee criminal defendants the right to a speedy trial. That means that if there are not enough judges to clear the backlog, people charged with some of the most heinous crimes will walk free – not by judicial discretion but as a matter of law. We cannot, in Georgia, allow that to happen. Under the Constitutions of our state and nation, we must protect defendants' constitutional rights. But in a democratic society, we cannot allow a lack of resources to threaten the public safety. As the economy improves, we need more judges to handle the business of our courts, including more senior judges – experienced former judges who do not require an increase in prosecutors, public defenders or administrative staff and are one of the best bargains this state ever had.

Backlogs and delays also add to the cost of doing business in Georgia. A recent study by the Washington Economics Group of Georgia's courts shows just how dire the effects of underfunded courts are on our economy. The study concluded that delays in resolving civil cases due to budget cuts have had adverse impacts on business proceedings throughout Georgia and affect this state's ability to create and retain jobs and to attract and expand industries. For the state of Georgia to keep its reputation as being an attractive, vibrant and efficient business environment, our courts must receive adequate funding. Businesses that are already in Georgia and those considering moving here want to know their court system works efficiently and can provide speedy resolution to their legal disputes.

In closing, I invite you – as representatives of the people of this state – to familiarize yourselves with your local courts and with the appellate and Supreme Court. Your local judges would welcome your interest. I would welcome your interest. I believe you would be proud of what you saw. So please visit. And watch democracy unfold.

Thank you, and God bless the state of Georgia.